

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**JOE ALLYN CAULEY**  
Decedent

VS.

**THE BOEING COMPANY**  
Respondent

AND

**AETNA CASUALTY & SURETY**  
Insurance Carrier

AND

## WORKERS COMPENSATION FUND

[illegible]

Docket No. 131,932

## ORDER

Decedent's son, Alex R. Cauley, appealed the March 13, 2006, Award entered by Administrative Law Judge John D. Clark. The Board heard oral argument on June 6, 2006. Gary R. Terrill participated in this appeal as a Board Member Pro Tem in place of Kenton Wirth, who recused himself from this proceeding.

## APPEARANCES

Terry J. Torline of Wichita, Kansas, appeared for Alex R. Cauley. Frederick L. Haag of Wichita, Kansas, appeared for respondent and its insurance carrier. Kendall R. Cunningham, of Wichita, appeared for the Workers Compensation Fund.

## RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award.

## ISSUES

This is a review and modification proceeding in a claim for workers compensation death benefits. Alex R. Cauley initiated this proceeding, contending he is entitled to receive benefits pursuant to the Workers Compensation Act as he is enrolled full-time in an accredited college

and he has not reached the age of 23 years. Respondent and its insurance carrier and the Workers Compensation Fund terminated payment of compensation to Alex Cauley after the maximum compensation for death benefits had been paid and Alex Cauley had reached 18 years of age.

In the March 13, 2006, Award, Judge Clark found that compensation to Alex Cauley after February 6, 2004 (Alex Cauley's 18th birthday), should be terminated, finding the maximum compensation in death benefits had been paid and that Alex Cauley was not entitled to receive benefits beyond the maximum compensation despite his status as a full-time student under the age of 23.

Mr. Alex Cauley contends that the legislature intended for benefits to continue for any dependent child of the employee until the age of 23 whenever such person is enrolled as a full-time student in an accredited institution of higher education or vocational education.

Respondent and its insurance carrier (respondent) and the Workers Compensation Fund (Fund) contend that all benefits terminate when the child becomes 18 years of age.

The only issue before the Board on this appeal is whether Alex Cauley is entitled to receive workers compensation benefits after his 18th birthday when the maximum amount of compensation has been paid.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the parties' arguments, the Board finds and concludes that the Award entered by the ALJ should be affirmed. The Board adopts the ALJ's findings and conclusions as its own.

Joe Allyn Cauley sustained accidental injury while working for respondent on February 5, 1988, and died as the result of that accidental injury. His surviving spouse and two dependent children filed a claim for death benefits with the Division of Workers Compensation, which ultimately were awarded after litigation.

K.S.A. 1987 Supp. 44-510b(a)(3) provided:

Any wholly dependent child of the employee shall be paid compensation, except as otherwise provided in this section, until such dependent child becomes 18 years of age, except that any such dependent child who is not physically or mentally capable of earning wages in any type of substantial and gainful employment, or who is enrolled as a full-time student in an accredited institution of higher education or vocational education shall be paid compensation until such dependent child becomes 23 years of age.

K.S.A. 1987 Supp. 44-510b(h) provided:

Notwithstanding any other provision in this section to the contrary, the maximum amount of compensation benefits payable under this section to any and all dependents by the employer shall not exceed a total amount of \$200,000 and when such total amount has been paid the liability of the employer for any further compensation under this section to dependents, other than minor children of the employee, shall cease except that the payment of compensation under this section to any minor child of the employee shall continue for the period of the child's minority at the weekly rate in effect when the employer's liability is otherwise terminated under this subsection and shall not be subject to termination under this subsection until such child becomes 18 years of age.

Claimant makes a valid point that the term "minor" has many definitions. Kansas statutes contain a hodgepodge of ages at which an individual is deemed to have come of age for a particular purpose. Nevertheless, within the Workers Compensation Act, K.S.A. 1987 Supp. 44-510b makes specific reference to the age of 18. Moreover, the exception permitted for students is clearly made subject to the general rule within K.S.A. 1987 Supp. 44-510b(h).

If any rule is to be narrowly construed, it must be the exception contained within K.S.A. 1987 Supp. 44-510b(a)(3), not the general rule in K.S.A. 1987 Supp. 44-510b(h), which begins "[n]otwithstanding any other provision in this section to the contrary . . . .

### **AWARD**

**WHEREFORE**, the Board affirms the March 13, 2006, Award entered by Judge John D. Clark.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June, 2006.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Terry J. Torline, Attorney for Claimant  
Frederick L. Haag, Attorney for Respondent and its Insurance Carrier  
Kendall R. Cunningham, Attorney for Fund  
John D. Clark, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director